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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,680

09/22/2003

Karen Hogan

22660-RA

9390

30184

7590

11/02/2006

MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.  
1899 POWERS FERRY ROAD  
SUITE 310  
ATLANTA, GA 30339

EXAMINER

PRICE, RICHARD THOMAS JR

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/667,680

Applicant(s)

HOGAN, KAREN

Examiner

Thomas Price

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-22-2003</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Taunton (US Patent 2,778,173).

Taunton teaches a method and apparatus of producing airtight packages. The device of Taunton includes a plurality of projections which broadly read on a mechanical tenderizing surface disposed therewithin the package. Taunton teaches edges 4 and 5 sealed along edges 6 and 7 in any suitable way to form a bag or pouch. Regarding claims 2 and 3, the bag of Taunton is non-porous plastic and is reversible. As for claims 9-11, the tenderizing surface of Taunton is integrally formed with said bag and includes pyramidal-shaped teeth disposed on at least one inner surface of said bag.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5, 7, 8, 19, 21, 22, 23 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Taunton (US Patent 2,778,178) in view of Logan, Jr. 6,212,716).**

Taunton does not specifically discuss the type of closure means for the bag or pouch. Logan teaches a Zip-loc bag and closure for releasably sealing a bag. Regarding the claims, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the closure means of Taunton with a conventional Zip-loc closure means, in view of the teachings of Logan, Jr. in order to releasably close the bag. Further, a Zip-loc closure is believed to be a hermetically sealed closure. Regarding claim 28, it is well known in the art to one of ordinary skill in the art at the time the invention was made to use one's hand to hit a food item for purpose of tenderizing the food item.

Claim 14, 15-18, 20, 21, 24-26 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Taunton (US Patent 2,778,178).** Taunton teaches a method and apparatus of producing airtight packages. The device of Taunton includes a plurality of projections which broadly read on a mechanical tenderizing surface disposed therewithin the package. Taunton teaches edges 4 and 5 sealed along edges 6 and 7 in any suitable way to form a bag or pouch. Regarding claims 2 and 3, the bag of Taunton is non-porous plastic and is reversible. As for claims 9-11, the tenderizing surface of Taunton is integrally formed with said bag and includes pyramidal-shaped teeth disposed on at least one inner surface of said bag.

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Taunton does not discuss the use of a drain spout attached to the bag. However, in regards to claims 14 and 24, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide the bag of Taunton with a drainage spout, in that, it allows a user to remove unwanted liquids from the interior of the bag without opening the bag completely. In regards to claim 15, it is notoriously well-known in the art to place food items in a marinade bag and to tenderize the food items by hitting the bag to one of ordinary skill in the art at the time the invention was made.

***Allowable Subject Matter***

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 571-272-6892. The examiner can normally be reached on M-F from 6:30a.m. to 3:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Thomas Price

Primary Examiner GAU: 3643  
October 29, 2006

rtp